IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2557 OF 2004

Shri Shadab Siddiq Khan
@ Shadab Chikna, Age 29 yrs.,
R/o. 102/106, Makka Manzil,
3rd Floor, Room No.44,
Duncan Road, Nagpada
Mumbai 400 008 .. Petitioner.

Versus

1. Shri A.N.Roy, Commissioner
of Police, Gr.Bombay. ..

2. State of Maharashtra ..

3. The Superintendent,
Nasik Road Central Prison,
Nasik. .. Respondents.

Shri U.N.Tripathi for the petitioner.

Shri S.R.Borulkar P.P. with Shri
D.S.Mhaispurkar A.P.P. for the respondents.

CORAM : SMT.RANJANA DESAI
& D.B.BHOSALE, JJ.

DATED : 9TH AUGUST, 2005

ORAL JUDGMENT: (PER SMT.RANJANA DESAI, J.)

1. This petitioner ("the detenu" for brevity) is detained under the order of detention dated 17th November, 2005 issued by the Commissioner of Police, Brihan Mumbai under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for

short) with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The said order of detention alongwith the grounds of detention and the material in support thereof was served on the detenu on 22.11.2004.

2. The order of detention is based on one C.R. and two in-camera statements. C.R.No.262 of 2004 is registered at Nagpada police station under section 325 of the Indian Penal Code. The statement of witness "A" is recorded on 25.9.2004 and the statement of witness "B" is recorded on 28.9.2004. On the basis of this material the detaining authority was satisfied that the detenu is a dangerous person as defined under section 2(b-1) of the said Act. In the grounds of detention he has stated that the detenu has unleashed a reign of terror and has become a perpetual danger to the society in the concerned locality and these activities are prejudicial to the maintenance of public order. The detaining authority has further averred that he was aware that the detenu has been granted bail in connection with C.R.No.262 of 2004 and he had availed the said bail facility and that he is likely to indulge in activities prejudicial to the maintenance of public order in future. In view of this the impugned

order of detention came to be issued.

3. We have heard at considerable length Mr.Tripathi, learned counsel appearing for the detenu. Mr.Tripathi has assailed the impugned order of detention only on one ground. He contended that representation dated 30.11.2004 was addressed on behalf of the detenu by his advocate to the Commissioner of Police, Mumbai and to the State Government with a request that the order of detention may be revoked. In the said representation the detenu had also asked for certain vital documents. Mr.Tripathi contended that the said representation was rejected on 10.12.2004. However, the detenu's request for supply of vital documents was not considered expeditiously. The detenu was directed to contact the Commissioner of Police for supply of the said documents. Drawing our attention to the judgment of the division bench of this court to which one of us (Smt.Ranjana Desai, J.) was a party, in **Aslam Amin Shaikh V. M.N.Singh & Others** Criminal Writ Petition No.155 of 2003 decided on 20.9.2003 the learned counsel contended that the detenu could not have been directed to approach the Commissioner of Police as that results in unnecessary delay and affects the detenu's right to make an effective

representation at the earliest. The State Government committed an error in directing the detenu to approach the Commissioner of Police for vital documents. The learned counsel further urged that the detenu's representation could not have been considered piecemeal by the State Government. The learned counsel urged that on account of this there is infringement of the detenu's rights under Article 22(5) of the Constitution of India and therefore the order of detention will have to be set aside. The learned counsel further urged that belatedly on 6.1.2005 the detenu was supplied with the documents which he had asked for. Such belated supply has also violated the detenu's rights under Article 22(5) of the Constitution of India.

4. The learned counsel drew our attention to the grounds of detention to explain why certain documents being vital documents were demanded by the detenu. He drew our attention to the following averment made in the grounds of detention:

> ".... .... Hearing the news, the son of Shri Mohamed Layik Khalil Khan namely Munnawar Khan reached there and he removed his injured father to Sir J.J.Group of Hospitals. In the said hospital, detailed examination of the injured Shri Mohammed Layik Khalil Khan was carried out. In the X-ray examination, it was revealed that the sixth rib bone of Shri Mohamed Layik Khalil

> Khan was broken/fractured because of the fist blow given by you on his stomach obviously with a hard object in your hand. The injured Shri Mohamed Layik Khalil Khan was treated in the said hospital and allowed to go".

. The learned counsel urged that X-ray report was a very vital and material document because there is a specific reference to X-ray examination in the averment quoted above. It was, therefore, incumbent upon the State Government to supply X-ray report or the medical certificate of the J.J.Hospital to the detenu at the earliest.

5. In support of his submission the learned counsel relied on the judgment of this Court in **Kashinath Muniram Pashi Vs. The Commissioner of Police and Others in Criminal Writ Petition No.2433 of 2004** decided on 28th March, 2005. Mr.Tripathi contended that somewhat similar contention was urged before this Court and after taking a resume of several judgments on the point this court summarised the law laid down by the Supreme Court and observed that if the detenu makes request for the documents which are casually or incidentally referred to as and by way of narration of the facts, they will have to be supplied to him, for whether they are relevant or not is for the detenu to decide and not for the detaining authority to

judge. The learned counsel urged that the present case is squarely covered by the said judgment. The learned counsel also drew our attention to the judgment of this Court in **Mohd. Hussain V. Secretary, Govt. of Maharashtra, Home Department, Mantralaya, Bombay & Others 1982 CRI.L.J.1848** which was followed by this Court in **Kashinath Pashi's** case (supra). Mr.Tripathi, therefore, urged that this Court should set aside the impugned order of detention on the ground that X-ray report or medical certificate showing that Mohammed Layik Khan had suffered rib fracture was not supplied to the detenu at the earliest.

6. Ground "D" urged by the petitioner in the petition reads thus:

> "D. The Petitioner says and submits that with reference to para No.5(a)(1) of the grounds of detention it is clearly averred that it was revealed in X-Ray Examination that Sixth rib bone was broken/fractured. The Petitioner says and submits that no supporting medicolegal documents like copy of the X-Ray or report of doctor from J.J.Hospital showing fracture in rib is either placed before the detaining authority or copy is furnished to the detenu, Law is well settled that medico-legal documents are vital documents and the detaining authority has clearly stated that the fracture took place because of the fist blow given by the detenu on his stomach obviously with a hard object in detenu's hand. The Petitioner says and submits that this is a false statement made by the detaining authority. Moreover any such thing is neither recovered, neither

> mentioned in Panchnama, nor in the statement of the complainant nor in the medical certificate. This shows total non-application of mind of the detaining authority. The Petitioner further submits that inspite of request of the detenu in his representation he was not furnished with any documents or informations. The satisfaction of the detaining authority vitiates. The order of detention is illegal and bad in law, ought to be quashed and set aside".

7. In ground "E" of the petition, the petitioner has urged that the petitioner had sent representation on 30.11.2004 to the State Government requesting for revocation of the order of detention and supply of vital documents but he had not received any communication from the authority as regards consideration of his representation. It is further urged that the detenu's request for supply of the documents has also not been considered and thus detenu is deprived of his right of making effective representation against the order of detention. Subsequently, the petition came to be amended on 25.4.2005. It appears that on 10.12.2004 a communication was received by the detenu's lawyer from the State Government informing him that the representation of the detenu was carefully and independently considered by the State Government. However, the request for release of the detenu is rejected. In the said communication the detenu's

lawyer was interalia informed that for request regarding furnishing of vital documents he should contact the Commissioner of Police. Thereafter ground 7(I) was taken up by way of amendment stating that this piecemeal consideration of the representation was impermissible in law. It is urged therein that this representation being one and a single document it must be considered fully and completely and its grounds cannot be segregated and considered separately. It is also urged that subsequently on 6.1.2005 the Sponsoring Authority supplied the documents to the detenu which has resulted in infringment of the detenu's rights under Article 22(5) of the Constitution of India. It is urged that the detenu could not have been directed to approach the Commissioner of Police for the documents. It is also urged that directing the detenu to approach the Commissioner of Police for the documents and supplying the documents to him belatedly amounts to not considering the detenu's representation properly.

8. The detaining authority has filed his reply to the petition. In his first affidavit, the detaining authority has categorically stated that the complainant in C.R.No.262/2004 was referred to the J.J.Hospital and after detailed examination it

was revealed that his sixth rib bone was broken or fractured. It is further stated that although the X-ray report was not forwarded to him by the Sponsoring authority, there was enough material in the form of remand application wherein it was clearly stated that the complainant has received a fracture injury. The detaining authority has further stated that non placement of X-ray report before him and non furnishing of copy thereof to the detenu has not deprived the detenu of his right to make an effective representation. The detaining authority has further averred that the detenu had asked for medical certificate and that he had communicated to the State Government that the medical certificate was not relied upon by him for issuing the order of detention and for arriving at subjective satisfaction as the remand report was placed before him which shows injury suffered by the victim.

9. Shri Satish Pawaskar, Under Secretary, Home Department in his affidavit has stated that the representation of the detenu was rejected by the State Government on 10.12.2004. He has further stated that in the same representation the detenu had demanded copies of certain documents and after considering the said request the Addl. Chief

Secretary (Home) directed that the documents be made available to the detenu. Accordingly the advocate of the detenu was informed to contact the detaining authority i.e. the Commissioner of Police and the detaining authority was also directed to furnish the documents to the detenu. Accordingly the said documents were furnished to the detenu in jail on 6.1.2005.

10. In his second affidavit Mr.Pawaskar, Under Secretary, Home Department has denied that the representation of the detenu dated 30.11.2004 was considered partly or in piecemeal. He has denied that there was no true and proper consideration of the said representation. He has stated that the Addl. Chief Secretary directed that copies of the documents be supplied to the detenu as demanded by him and the detenu was directed to contact the Commissioner of Police but the Commissioner of Police was also directed to furnish copies of the documents to the detenu and thereafter those documents were furnished to the detenu through the Sponsoring Authority after getting the same translated in the language known to the detenu. Mr.Pawaskar has further stated that in the said representation two separate prayers were made - one for revocation of the order of detention and second

for supply of the documents. They were considered together. The request for revocation was rejected and prayer for supply of the documents was granted and, therefore, the representation was properly considered. It was not considered in piecemeal manner.

11. To us this explanation appears to be proper and acceptable. We have carefully gone through the copy of the representation which is annexed to the petition. This document which is described as representation by the detenu contains two prayers - one is for revocation of the order of detention and other prayer is regarding supply of vital documents. The State Government has rejected the prayer for revocation and granted the request for vital documents. It was urged that the State Government could not have done this. The State Government could have rejected the representation in its entirety but could not have considered it piecemeal. We fail to understand this submission. In fact, it is very clear to us that the State Government was quite conscious of the responsibility which lies on its shoulders. The prayer for revocation is to be considered expeditiously and the detenu is to be told that either his prayer for revocation is granted or is

rejected. That has been done as expeditiously as possible. No grievance is made before us that there is any delay in consideration of that aspect of the representation. Had the State Government not done that its conduct could have been criticised by saying that the State Government is oblivious of the enormous responsibility which lies on its shoulders.

12. This takes us to the request for supply of documents. It was rightly urged by Mr.Tripathi that any request for supply of documents must be considered by the State Government after the detention order is approved by it. In this connection reliance was placed on the judgment of this Court in **Aslam Shaikh's** case (supra). But the facts in **Aslam Shaikh's** case differ from the facts of this case. In that case the State Government had completely disowned its responsibility of supplying the documents and directed the detenu to approach the Commissioner of Police. In this case the representation was sent by the detenu's advocate. It is true that he was asked to contact the Commissioner of Police, but the State Government also directed the Commissioner of Police to furnish the documents to the detenu's advocate and the documents were accordingly furnished. In

this case, therefore, it cannot be said that the State Government has been negligent or was unaware of its duty. The judgment of this Court in **Aslam Shaikh's** case would not be applicable to this case. Mr.Borulkar, the learned P.P. has produced in this Court a copy of the sponsoring authority letter dated 5.1.2005. It is addressed to the detenu's advocate. It is stated therein that the documents are being supplied as directed by the State Government. Mr.Pawaskar, the Under Secretary to the State Government has stated in his affidavit that the said documents were translated in the language known to the detenu and furnished to him. It is, therefore, clear that the State Government being conscious of its obligation asked the Commissioner of Police to furnish the said documents to the detenu's advocate and the Commissioner of Police took care to translate them in the language known to the detenu and furnished them to the detenu. This explains why some time was taken to supply documents to the detenu. Therefore, the argument that there is any delay in furnishing the documents must also be rejected.

13. The argument that there is piecemeal consideration of the representation must also be rejected. If infact the detenu was handicapped

because vital documents were not supplied to him, he could not have made a representation. But he chose to make a representation with a prayer for revocation of detention order and a prayer for supply of documents. Prayer for revocation was rejected and the prayer for supply of documents was processed to ensure that he gets the documents. The State Government has correctly dealt with the representation. No other course could have been adopted by it.

14. We may also express our displeasure about the manner in which representations are drafted by some advocates. It is true that no particular format of a representation is prescribed. But representation should be in clear and unambiguous language. If the representation is sent through jail by a detenu, any defect or ambiguity in it may be overlooked. But if it is sent by a lawyer we expect clarity. Just as we expect the State government and other authorities to be conscious of the mandate of Article 22(5) of the Constitution of India and to take all steps to ensure that the said mandate is carried out, we also expect the lawyers who draft and forward representations to avoid ambiguities in the representations so that they can be promptly dealt with by the State government.

Assuming that a detenu can pray for revocation of the detention order and also ask for documents and contend that on account of non-supply of those documents he was unable to make an effective representation, he certainly cannot contend that rejection of prayer for revocation is bad in law because it amounts to piecemeal consideration. This clearly is an attempt to frustrate the order of detention, because if the prayer for revocation is not considered the order is liable to be struck down on that ground. If the prayer for revocation is considered and steps are taken to supply documents, it is sought to be contended that consideration of representation is piecemeal and hence detention order must be set aside. We have unhesitantly rejected this submission. But we must note that this is a distressing trend.

15. It is the case of the petitioner as stated in the grounds of the petition that no supporting medicolegal documents like X-ray or report of doctor from J.J.Hospital showing that sixth rib bone of Mohamed Layik was fractured was placed before the detaining authority and no such material was supplied to the detenu. It is a fact that X-ray or report of doctor from J.J.Hospital showing fracture of sixth rib bone was not placed before

the detaining authority. If those documents were not placed before the detaining authority, there is no question of supplying copies thereof to the detenu. This submission must therefore fail.

16. We will now turn to the material that was placed before the detaining authority. In the affidavit the detaining authority has stated that he had considered the remand application which was placed before him. It is clearly stated in the remand application that because of the fist blow given by the accused to the complainant, complainant's (Mohamed Layik's) sixth rib was fractured and grievous injury was caused to him. The injury certificate of Mohamed Layik was also before the detaining authority. In that certificate following noting is found "Tenderness over left side of abdomen adviced X-ray chest P.A.". In our opinion it is on the basis of this material that the detaining authority has referred to the sixth rib bone fracture of Mohamed Layik. Copies of these documents were supplied to the detenu alongwith order of detention. Therefore there is no question of there being any violation of the detenu's right under Article 22(5) of the Constitution of India.

17. We shall now turn to the submission of Mr.Tripathi based on the decision of this Court in **Kashinath Pashi's** case (supra). In that case the detenu was detained under the provisions of the said Act. In the grounds of detention three documents were referred to. They were described as follows:

> ".... .... (1) Notice stated to have been issued on 6.5.2004 by Shri Hitesh Satam to his customer namely, Manubhai Patel, Kiran Bhatia, Narayan @ Baba Singh and others by registered letter requesting them to pay the dues and increased rate of subscription; (2) the complaint made in the form of application by Shri Hitesh Satam on 4.6.2004 filed with the Sr. Inspector of Police, Goonda Crime Branch, Mumbai, regarding the incident stated to have occurred on 2.6.2004 involving the petitioner and his associates Pappu Varma, Santosh Gaikwad, Anwar Aurangzeb Khan and Tejpal Channappa Karkera at the house of the complainant and; (3) the proposal submitted by the Sr.Inspector of Police, Meghwadi Police Station to the detaining authority for the issuance of the detention order against the petitioner".

18. In the representation dated 15.1.2005, the petitioner had requested the Secretary to the Govt. of Maharashtra to furnish him copies of the said documents. It was stated that on account of non furnishing of the said three documents, the detenu had not been able to make effective representation and further that those copies were required to enable him to make effective representation.

However, in reply the petitioner was asked to contact the office of the Commissioner of Police but the said documents were not supplied to the petitioner at any time and even till the day on which the Division Bench heard the petition i.e. 20th March, 2005. It is against the backdrop of these facts and after referring to the judgments of the Supreme Court and to the judgment of this Court in **Mohd. Hussain's** case (supra) the Division Bench summarised the law as follows:

> "(a) The copies of all the documents which are relied upon in or which form the basis of the grounds of detention, must be supplied to the detenu alongwith the grounds of detention;
>
> (b) the documents which are not relied upon or do not form the basis of the detention order but which are merely referred to casually or incidentally as and by way of narration of facts in the grounds of detention need not be supplied to be detenu;
>
> (c) however, even such documents, if the detenu requests for the same, have to be supplied to him, for whether they are relevant to his defence or not is for the detenu to decide and not for the detaining authority to judge."

19. Relying very heavily on clauses (b) and (c) Mr.Tripathi contended that X-ray report has been relied upon by the detaining authority, but even assuming it is not relied upon even if it is casually or incidentally referred to by way of

narration of facts in the grounds of detention, if the request is made the State Government was bound to supply it to the detenu and whether it is relevant or not it is for the detenu to decide and not for the detaining authority to judge.

20. We may first notice difference between the facts which were before the Division Bench in **Kashinath Pashi's** case and the facts in our case. It is pertinent to note that in **Kashinath Pashi's** case the documents for which request was made were not supplied to the detenu till the date on which the petition was heard. Such are not the facts here. In this case the documents were supplied to the detenu on 6.1.2005. It is pertinent to note that after supply of the documents the detenu did not choose to make any representation. So much for his grievance that his right to make representation was violated. We are, therefore, of the opinion that on facts the judgment in **Kashinath Pashi's** case can be clearly distinguished from the facts of the present case.

21. In this connection we may refer to certain judgments to indicate how law as regards supply of documents has developed. In **Ramchandra A. Kamat V. Union of India and Others AIR 1980 SC 765** the

Supreme Court was considering the request for copies of the documents referred to in the grounds of detention. It was urged that there was unreasonable delay in supplying the documents. The Supreme Court held that there was violation of Article 22(5) of the Constitution of India. While coming to this conclusion the Supreme Court observed that when the grounds of detention are served on the detenu, he is entitled to ask for copies of the statements and documents referred to in the grounds of detention to enable him to make an effective representation. When the detenu makes a request for such documents, they should be supplied to him expeditiously. In that case the detaining authority had contended that it was not incumbent upon the detaining authority to supply copies of all the documents relied upon in the grounds of detention. While dealing with this submission the Supreme Court observed that it may not be necessary for the detaining authority to supply copies of all the documents relied upon in the grounds of detention at the time when the grounds are furnished to the detenu but once the detenu states that for effective representation it is necessary that he should have copies of the documents referred to in the grounds of detention, it is duty of the detaining authority to furnish

them with reasonable expedition. The detaining authority cannot decline to furnish copies of the documents on the ground that the grounds were sufficiently detailed to enable the petitioner to make an effective representation.

22. In **Hansmukh V. State of Gujarat and Others AIR 1981 SC 28** the Supreme Court was considering similar question. Though Supreme Court was dealing with a detention order under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, the principles are same. The Supreme Court explained what is meant by the word "Grounds". It was observed that "while the expression "grounds" in Article 22(5), and for that matter, in section 3(3) of the COFEPOSA, includes not only conclusions of fact but also all the 'basic facts' on which those conclusions are founded they are different from subsidiary facts or further particulars of the basic facts. The distinction between "basic facts" which are essential factual constituents of the "grounds" and their further particulars or subsidiary details is important. While the "basic facts" being integral part of the "grounds" must, according to section 3(3) of COFEPOSA be communicated to the detenu, as soon as may be, after the detention, ordinarily not

later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than 15 days from the date of detention, further particulars of those grounds in compliance with the second constitutional imperative spelled out from Art.22(5) in AIR 1975 SC 550 are required to be communicated to the detenu, as soon as may be practicable, with reasonable expedition".

23. In **Mst.L.M.S.Ummu Saleema V. B.B.Gujaral and another AIR 1981 SC 1191** the Supreme Court was dealing with the same question. The Supreme Court observed that every failure to furnish copy of a document to which reference is made in the grounds of detention under Section 3(1) of the Act is not an infringement of Art.22(5), fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation that amounts to a violation of fundamental rights guaranteed by Art.22(5).

24. In **Haridas Amarchand Shah V. K.L.Verma and Others AIR 1989 SC 497** the Supreme Court was considering the same question. The Supreme Court

observed that it is not necessary to furnish copies of all the documents including the bank pass books which are not material and relevant for reaching the subjective satisfaction of the detaining authority merely because they were mentioned in the panchnama.

25. We may also refer to judgment of the Supreme Court in **Kamarunnissa V. Union of India and Another 1991 CRI. L.J.2058** in which clear shift in the view of the Supreme Court as regards supply of documents in discernible. Attention of this Court was not drawn to this judgment in **Kashinath Pashi's** case. In that case while dealing with similar question the Supreme Court observed that it is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand but it must further be shown that the non-supply has impaired the detenu's right to make an effective and purposeful representation. Following observations of the Supreme Court are material: "Demand of any or every document, however irrelevant it may be for the concerned detenu, merely on the ground that there is a reference thereto in the grounds of detention, cannot vitiate an otherwise legal detention order."

26. In view of the above judgments of the Supreme Court, in our opinion, merely because the document is referred to in the grounds of detention it is not obligatory on the detaining authority to supply it on demand made by the detenu. It is only such documents whose non supply would impair the detenu's right to make an effective representation which would vitiate the order of detention. In the instant case as we have already stated the X-ray report was not even placed before the detaining authority. The averment made by the detaining authority in the grounds of detention is borne out by other material on record and the copies of that material have been supplied to the detenu. The contention that the charge was under section 325 of the Indian Penal Code and, therefore, it was essential to supply X-ray report to indicate that the complainant had suffered grievous hurt cannot be accepted because that he had suffered grievous hurt was clearly indicated in remand application and the copy thereof was supplied to the detenu.

27 In view of the above in our opinion there is no substance in the petition. The detention order is perfectly legal and valid. The petition is rejected. Rule is discharged.

. Certified copy expedited.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)